

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2001-309-C - ORDER NO. 2002-121
FEBRUARY 25, 2002

IN RE: Application of Optical Telephone Corporation)	ORDER	
for a Certificate of Public Convenience and)	GRANTING	
Necessity to Operate as a Reseller of)	CERTIFICATE FOR	
Intrastate Interexchange Telecommunications)	LONG DISTANCE	
Services within the State of South Carolina)	AUTHORITY AND	
and for Alternative Regulation.)	MODIFIED	
)	ALTERNATIVE	
)	REGULATION	

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of Optical Telephone Corporation ("OTC" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to provide intrastate, interexchange telecommunications services within the State of South Carolina. In addition, the Company requests that the Commission regulate its business services offerings in accordance with the principles and procedures established for alternative regulation in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. The Company's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 2001) and the Regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed OTC to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the affected areas. The purpose of the Notice of Filing was to inform interested parties of OTC's Application and

of the manner and time in which to file the appropriate pleadings for participation in the proceeding. OTC complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene were filed.

A hearing was convened on January 31, 2002, at 11:30 a.m. in the Commission's Hearing Room at 101 Executive Center Drive, Columbia, South Carolina. The Honorable William Saunders, Chairman, presided. John J. Pringle, Jr., Esquire represented OTC. Adelaide D. Kline, Staff Counsel, represented the Commission Staff.

Mark Frost, President of OTC, appeared and testified in support of the Application. Mr. Frost testified that he manages the day-to-day operations at OTC. He said prior to joining OTC, he maintained and updated customer service records for UKI Communications, Inc., an interexchange telecommunications reseller. The record reveals that OTC is an Alabama corporation that has been authorized to transact business within the State of South Carolina. As a reseller of intrastate interexchange telecommunications services, Mr. Frost testified that OTC will offer its services to the public on a statewide basis and will offer a full range of 1+ interexchange telecommunications services on a resale basis. Specifically, OTC seeks authority to provide Message Telecommunications Service (MTS) and postpaid calling card services. The Company does not intend to offer prepaid calling cards at this time. However, Mr. Frost testified that OTC understands the Commission's requirement of posting a \$5,000 bond in the event they ever decide to offer prepaid calling cards. Mr. Frost stated that the Company's target market in South Carolina will be strictly residential customers. He said OTC will market its services via personal and telephone contact by OTC's employees and/or authorized distributors; the

Company will utilize telemarketing as well as its Internet website as the primary means of promoting its services. He testified he is aware of the Commission's marketing guidelines and his Company's total responsibility for the actions of its telemarketers. OTC uses electronic recordings which are verified by a third party verification company before it transfers customers to its services. Mr. Frost testified that Martha Sandavol is the regulatory and customer service contact person for the Company.

Regarding the Company's technical abilities to offer telecommunications services in South Carolina, Mr. Frost testified that OTC expects to continue to utilize the interexchange carrier services of Qwest, AT&T and MCI WorldCom. He stated that OTC will only utilize carriers properly certified by this Commission to provide service in this state. OTC is authorized to provide telecommunications services in thirty-three states and had applications pending in eight states at the time of the hearing. According to Mr. Frost, OTC operates a customer service center available twenty-four hours a day, seven days a week. The testimony reveals OTC has a policy of responding to any billing or service inquiries within twenty-four hours. Mr. Frost testified that in the event an inquiry requires further investigation on the part of the service representative, the customer is advised of the reasons for the need for additional inquiries and is given a date certain by which the inquiry will be addressed. He additionally testified that OTC can be reached by toll-free number at (866) 207-3220.

Concerning the financial ability of OTC to operate within South Carolina, Mr. Frost stated that OTC is doing quite well for a start up company. He said OTC has brought on 24,000 customers and has a generous line of credit and personal resources in

the event the Company needed an infusion of capital. Mr. Frost stated that John Ross is the Company's financial contact person.

As to OTC's managerial abilities to offer the services it proposes to offer in South Carolina, Mr. Frost testified that OTC's management personnel represent a broad spectrum of business and technical disciplines, possessing many years of individual and aggregate telecommunications experience. Mr. Frost said that prior to his employment with OTC, he was involved in a variety of technical capacities with UKI and a number of organizations. He said he has been in computer programming for twelve years and is currently working on a Bachelor of Science degree in Computer Science at Kennesaw State College. Mr. Frost said his technical experience, coupled with his experience at UKI, have enabled him to develop an extensive understanding of the operations of long distance resellers. The record reveals that in addition to Mr. Frost, OTC's technical operations will be managed by David K. Burnette, Scotty Sharpe, and John Ross. Mr. Frost said that John Ross is the Company's Vice President. Mr. Ross holds a degree in business administration from Richland Community College, Richardson, Texas. Further, he testified that Mr. Burnette has ten years of technical experience including network administration and hardware/software installation, configuration and maintenance. Mr. Burnette holds a Bachelor of Science degree in Human Ecology from the University of Tennessee. Mr. Frost offered that Mr. Sharpe has five years of technical experience including network and systems administration and Mr. Ross has six years of technical experience including website design, database creation and maintenance, and network administration.

According to Mr. Frost, OTC has never had authority denied in any state where it has applied for authority nor has the Company had authority revoked in any state where it has been granted authority. Additionally, OTC has never been the subject of an investigation, fined or sanctioned by a state or federal regulatory body. According to the testimony, OTC has not marketed its services in South Carolina prior to receiving certification, and OTC has not received revenues from the completion of intrastate calls in South Carolina prior to receiving certification. Mr. Frost stated that OTC will abide by all the Commission's rules, regulations and Orders upon the Company receiving certification to operate as a reseller of intrastate interexchange telecommunications services in South Carolina. Finally, Mr. Frost testified that OTC agrees to make all changes to its final tariff that were suggested by the Commission Staff, including the addition of the Company's email address and telephone number to the bottom of each page of the final tariff. He additionally agreed to file a copy of the Company's Bill Form with the final tariff in order to be in compliance with the Commission's Rules and Regulations. He stated he understands and is aware of the Commission's requirements that all telecommunications carriers file a report on South Carolina operations, a gross receipts report, and a universal service contribution report on an annual basis. He committed to file his Company's financial reports on a timely basis. OTC requested that all of its business service offerings be regulated pursuant to the procedures described and set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. It is OTC's intent by this request to have its business services regulated in the same manner as this Commission has permitted for AT&T Communications of the Southern States. Mr. Frost

testified that he understands that alternative regulation has now been modified by this Commission because of the re-imposition of rate caps with regard to certain “operator assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as their toll provider. Mr. Frost testified he understands that Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls.

After full consideration of the applicable law, the Company’s Application, and the evidence presented at the hearing, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. OTC is organized as a corporation under the laws of the State of Alabama and has been authorized to transact business within the State of South Carolina.
2. OTC is a provider of long distance services and wishes to provide long distance services in South Carolina.
3. OTC has the experience, capability, and financial resources to provide the services as described in its Application.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to OTC to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area

Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for the long distance services of OTC which are consistent with the principles and procedures established for alternative regulation for business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C.

Under the Commission approved alternative regulation, the business service offerings of OTC including consumer card services, and operator services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 (Docket No. 2000-407-C), this Commission has modified alternative regulation by the re-imposition of rate caps with regard to certain “operator-assisted calls” where a customer uses a local exchange carrier as their toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme, tariff filings for business services shall be presumed valid upon filing. The Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to OTC also.

3. The Commission adopts a rate design for OTC for its resale of residential interexchange services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

4. OTC shall not adjust its residential interexchange rates below the approved maximum level without notice to the Commission and to the public. OTC shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for interexchange services reflected in the tariff, which would be applicable to the general body of the Company's subscribers, shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provision of S.C. Code Ann. §58-9-540 (Supp. 2001).

5. If it has not already done so by the date of issuance of this Order, OTC shall file its revised tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order

and shall be consistent with the Commission's Rules and Regulations. Further, OTC shall file a copy of its Bill Form as required by 26 S.C. Code Ann. Regs. 103-612.2.2 and 102-622.1 (1976) with its final Tariff.

6. OTC is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

7. With regard to the OTC resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. OTC shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If OTC changes underlying carriers, it shall notify the Commission in writing.

9. OTC shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, OTC shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

OTC shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The "Authorized Utility Representative Information" form can be found at the Commission's website at www.psc.state.sc.us/forms; this form shall be utilized for the provision of this

information to the Commission. Further, OTC shall promptly notify the Commission in writing if the representatives are replaced.

10. With regard to the origination and termination of toll calls within the same LATA, OTC shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the Federal Communications Commission pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209).

11. The Company's request to maintain its books in accordance with Generally Accepted Accounting Principles (GAAP) is granted.

12. The Company also requests a waiver of 26 S.C. Code Ann. Regs. 103-610 (Supp. 2001) which requires the Company's books and records to be kept in the State of South Carolina. The Company desires to keep its books and records at its principal place of business. We find that it would be unusually difficult for the Company to maintain its books and records in South Carolina. It would be in the public interest to have the company maintain its books and records at its principal place of business; therefore, the Company's request for a waiver of Regulation 103-610 is granted.

13. OTC is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

14. OTC shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the

gross receipt report will necessitate the filing of intrastate information. Therefore, OTC shall keep financial records on an intrastate basis for South Carolina to comply with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at www.psc.state.sc.us/forms. The title of this form is "Annual Information on South Carolina Operations for Interexchange Companies and AOS." This form shall be utilized by the Company to file annual financial information with the Commission. Commission gross receipts forms are due to be filed with the Commission no later than October first of each year.

15. Each telecommunications company certified in South Carolina is required to file annually the Intrastate State Universal Service Fund (USF) worksheet. This worksheet provides the Commission Staff information required to determine each telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than August 15th.


16. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

William Buckley

Chairman

ATTEST:


Executive Director

(SEAL)